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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Lassen)

DEBORAH CROOKS-VOROS, Plaintiff and Appellant, v. DIAMOND MOUNTAIN CASINO, Defendant and Respondent.	C043814 (Super. Ct. No. 36842)

In this personal injury action, defendant Diamond Mountain Casino moved to quash service of process on the ground defendant enjoys sovereign immunity from suit. The motion was set for hearing on the first court date available.

Plaintiff Deborah Crooks-Voros appeals from the order granting defendant's motion to quash. She argues the trial court was without power to decide the motion because it was set for hearing by defendant "more than 30 days after the filing of

the notice" in contravention of Code of Civil Procedure section 418.10, subdivision (b).[1]

We disagree and shall affirm.

FACTS AND PROCEDURAL BACKGROUND

On January 8, 2003, plaintiff filed this action for personal injury and premises liability, alleging she slipped and fell near the restroom in defendant's casino.

On February 6, 2003, defendant moved to quash service of summons on the complaint on the ground it is an American Indian tribal entity, enjoys sovereign immunity from civil lawsuit, and has not waived that immunity. The notice stated that defendant's motion would be heard on March 17, 2003.

In opposition, plaintiff urged the court to deny the motion on the ground defendant set the matter for hearing 39 days after the notice was filed, rather than within 30 days of the notice as required by section 418.10, subdivision (b).[2] On the merits,

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[1] All further statutory references are to the Code of Civil Procedure.

[2] Section 418.10 provides in relevant part: "(a) A defendant, on or before the last day of his or her time to plead or within any further time that the court may for good cause allow, may serve and file a notice of motion for one or more of the following purposes: [¶] (1) To quash service of summons on the ground of lack of jurisdiction of the court over him or her. [¶] . . . [¶] (b) *The notice shall designate, as the time for making the motion, a date not more than 30 days after filing of the notice.* The notice shall be served in the same manner, and at the same times, prescribed by subdivision (b) of Section 1005. The service and filing of the notice shall extend the defendant's time to plead until 15 days after service upon him or her of a written notice of entry of an order denying his or

plaintiff argued defendant was estopped by its actions from relying on a defense of sovereign immunity.

In reply, defendant submitted the declaration of a defense paralegal stating that the hearing date for the motion was set with the assistance of a court clerk and that March 17 was the earliest date available on the court's calendar.[3]

The trial court announced its ruling at the hearing on defendant's motion to quash. It found good cause for scheduling the hearing beyond the 30-day limit set forth in the statute: ". . . I would take judicial notice of the fact that there are set law and motion dates available being in essence a one judge court for the civil proceedings, and the fact is that the defendant in this case would have a Hobson's choice of sorts in selecting a date, did according to the declaration receive a date to set the matter for hearing from the member of the clerk's filing office, and I don't believe that the 30 days in that regard is jurisdictional in the sense that the court can't find good cause for hearing the matter beyond 30 days. [¶] The court does find good cause . . . ."

The court then granted the motion to quash on its merits, explaining: ". . . I think the law is well established that absent a . . . specific waiver of sovereign immunity that the

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her motion, except that for good cause shown the court may extend the defendant's time to plead for an additional period not exceeding 20 days." (Italics added.)

[3] The declaration of defense paralegal Deborah L. Bartlett is not in the appellate record. But since the parties agree as to its substance, we accept their characterization of its contents.

court has no choice but to observe that and grant the motion to quash."

DISCUSSION

Plaintiff now contends the trial court "erred in granting defendant's motion to quash service of summons because the motion was noticed for hearing more than 30 days after filing of the notice."

She relies on section 418.10, subdivision (b), which states that notice of a motion to quash service of summons "shall designate, as the time for making the motion, a date not more than 30 days after filing of the notice." Plaintiff argues the "plain meaning" of the statute requiring the moving party to designate the hearing not more than 30 days after the motion is filed renders the provision mandatory and jurisdictional. Because defendant's notice of motion designated a hearing date 39 days after the motion was filed, she concludes the court was without power to grant it.

We must disagree.

"Where, as here, the issue presented is one of statutory construction, our fundamental task is 'to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute.' [Citations.] We begin by examining the statutory language because it generally is the most reliable indicator of legislative intent. [Citation.] We give the language its usual and ordinary meaning, and '[i]f there is no ambiguity, then we presume the lawmakers meant what they said, and the plain meaning of the language governs.' [Citation.] If, however, the

statutory language is ambiguous, 'we may resort to extrinsic sources, including the ostensible objects to be achieved and the legislative history.' [Citation.] Ultimately we choose the construction that comports most closely with the apparent intent of the lawmakers, with a view to promoting rather than defeating the general purpose of the statute. [Citations.] Any interpretation that would lead to absurd consequences is to be avoided. [Citation.]" (*Allen v. Sully-Miller Contracting Co.* (2002) 28 Cal.4th 222, 227.)

Plaintiff insists the statute's use of the word "shall" demands that the trial court decline to hear any motion in which the hearing is set beyond the 30-day time limit.

But while "the word 'shall' in a statute is ordinarily deemed mandatory, and 'may' permissive" (*California Correctional Peace Officers Assn. v. State Personnel Bd.* (1995) 10 Cal.4th 1133, 1143), "a court may consider the consequences that would follow from a particular construction and will not readily imply an unreasonable legislative purpose." (*Id.* at pp. 1147-1148 [holding that statute defining when State Personnel Board "shall" render its decision following investigation is not mandatory and jurisdictional].) And in so doing, we must also consider "'"the object to be achieved and the evil to be prevented by the legislation."' [Citation.]" (*People v. Superior Court (Zamudio*) (2000) 23 Cal.4th 183, 193; *Horwich v. Superior Court* (1999) 21 Cal.4th 272, 276.)

The interpretation urged by plaintiff in this case is inconsistent with the purpose of the statute. The purpose of

section 418.10 is "to permit a defendant specially to challenge the court's personal jurisdiction without waiving his right to defend on the merits by allowing a default to be entered against him while the jurisdictional issue is being determined" (*In re Marriage of Merideth* (1982) 129 Cal.App.3d 356, 363), and to allow a defendant to make an early challenge to the court's assertion of personal jurisdiction without making a general appearance (see *Nelson v. Horvath* (1970) 4 Cal.App.3d 1, 4; 2 Witkin, Cal. Procedure (4th ed. 1996) Jurisdiction, § 210, p. 775).

Here, the trial court's unavailability alone prevented the hearing from being scheduled and conducted within 30 days as required by section 418.10. The court expressly found -- and the parties agree -- that defendant's failure to set the matter for hearing within 30 days of filing the notice of motion was done at the direction of the trial court staff. The court declared that necessity requires it to serve as "a one judge court" for civil proceedings, and hearing dates for civil law and motion matters are limited by the court.

Plaintiff would have us require the trial court to refuse to hear any motion to quash that the court's own availability precluded from being heard within 30 days of the hearing's notice. But the consequence of demanding that the trial court refuse to consider a motion to quash under these circumstances would only be further delay of the court's determination of personal jurisdiction and defeat of the statutory purpose of early resolution of such challenges. Defendant could raise the

same challenge to personal jurisdiction by demurrer, which (if its first motion were not denied) would not constitute a general appearance (§ 418.10, subd. (e)(1)), and the trial court may "on any terms as may be proper . . . enlarge the time for . . . demurrer" (§§ 473, subd. (a)(1), 418.10, subd. (d)).

Plaintiff appears also to suggest the trial court may be required to automatically *deny* a motion to quash whenever the trial court's own calendar or availability precludes hearing within the 30-day period. Such a rule would certainly defeat the statute's purpose of allowing a defendant to challenge jurisdiction by special appearance: once the motion to quash is denied for failure to notice the hearing within 30 days, a defendant would be deemed thereafter to have generally appeared upon entry of the order denying the motion. (§ 418.10, subd. (e)(1)).

In sum, the purpose of allowing a defendant to challenge jurisdiction without making a general appearance and while preserving his defenses on the merits would not be served by enforcing a strict time limit between the motion notice and the hearing. And, as is apparent from the facts of this case, litigants in counties with few trial judges would disproportionately suffer additional delay or lose altogether the opportunity to challenge jurisdiction by motion to quash. The Legislature cannot have intended this result.

Plaintiff cites no cases holding specifically that the failure to set the hearing on a motion to quash within 30 days

of its notice precludes the court from considering such a motion.

She relies instead wholly upon the recent Fourth District Court of Appeal decision in *Decker v. U.D. Registry, Inc.* (2003) 105 Cal.App.4th 1382 (*Decker*), which construed the notice provision in section 425.16, the anti-SLAPP statute (strategic lawsuit against public participation). Section 425.16, subdivision (f) provides that a special motion to strike under that statute "shall be noticed for hearing not more than 30 days after service unless the docket conditions of the court require a later hearing." In *Decker*, the Court of Appeal upheld the trial court's denial of the defendant's motion to strike the complaint on the ground the defendant noticed the hearing beyond the 30-day deadline without showing that the condition of the court's docket required a later hearing, and the opposing parties objected on the basis of improper notice in the trial court. (*Decker*, *supra*, 105 Cal.App.4th at pp. 1387-1390.) In so doing, the court analyzed section 425.16 and its history, including the fact that a pending motion under section 425.16 stays discovery; it concluded that construing as mandatory the word "shall" in subdivision (f) advances the Legislature's purposes of "requiring a prompt hearing on the motion so as not to prolong the discovery stay" and "creating a prompt and efficient means for terminating claims improperly aimed at the exercise of free speech or the right of petition." (*Decker*, *supra*, 105 Cal.App.4th at p. 1390.)

Plaintiff insists that because section 418.10 contains no exception to the strict requirement that motions brought under the section be noticed for hearing within 30 days -- unlike section 425.16, which permits an extension if "the docket conditions of the court require a later hearing" (§ 425.16, subd. (f)) -- the trial court here should have ignored the effect of its docket.

It was not required to do so. "It is . . . well established that courts have fundamental inherent equity, supervisory, and administrative powers, as well as inherent power to control litigation before them." (*Rutherford v. Owens-Illinois, Inc.* (1997) 16 Cal.4th 953, 967 (*Rutherford*).) The Legislature has acknowledged that every court has the inherent power "[t]o provide for the orderly conduct of proceedings before it . . . ." (§ 128, subd. (a)(3); see *Rutherford*, *supra*, 16 Cal.4th at p. 967.) But those powers "'exist apart from any statutory authority.'" (*First State Ins. Co. v. Superior Court* (2000) 79 Cal.App.4th 324, 333 (*First State*), quoting *Asbestos Claims Facility v. Berry & Berry* (1990) 219 Cal.App.3d 9, 19; but compare *Hernandez v. Superior Court* (2003) 112 Cal.App.4th 285, 299 [court may exercise its inherent power to continue the hearing date of the motion for summary judgment] with *First State*, *supra*, 79 Cal.App.4th at pp. 333-334 [court has no power to place additional burdens upon the moving party in a summary judgment motion beyond those contained in section 437c].) Under the circumstances here, in which the trial court had limited opportunities to hear civil matters, we cannot conclude it was

without power to hear a motion to quash more than 30 days after it was noticed.

Finally, we note that plaintiff was not prejudiced by having nine more days than the statute provides between the notice and the hearing on defendant's motion to quash. She had ample time in which to oppose the motion; she had an opportunity to be heard on the motion.

DISPOSITION

The judgment (order) is affirmed. Defendant shall recover costs on appeal. (Cal. Rules of Court, rule 27(a).)

RAYE, J.

We concur:

BLEASE, Acting P.J.

ROBIE, J.